ATTORNEYS TITLE GUARANTY FUND, INC. 999 18th Street, Suite 1101 Denver, Colorado, 80202

NAIC COMPANY CODE 51560

MARKET CONDUCT EXAMINATION REPORT as of December 31, 2003

PREPARED BY THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

ATTORNEYS TITLE GUARANTY FUND, INC. 999 18th Street, Suite 1101 Denver, Colorado 80202

MARKET CONDUCT EXAMINATION REPORT as of December 31, 2003

Prepared by

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John E. Bell

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August 26, 2004

The Honorable Doug Dean Commissioner of Insurance State of Colorado 1560 Broadway Suite 850 Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Attorneys Title Guaranty Fund, Inc. has been conducted. The Company's records were examined at the offices of the Division of Insurance at 1560 Broadway, Suite 850, Denver, Colorado 80202.

The examination covered a one-year period from January 1, 2003 to December 31, 2003.

A report of the examination of Attorneys Title Guaranty Fund, Inc. is, herewith respectfully submitted.

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MARKET CONDUCT EXAMINATION REPORT OF ATTORNEYS TITLE GUARANTY FUND, INC.

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COMPANY PROFILE

Attorneys Title Guaranty Fund, Inc. (the Company) was incorporated in October 1960, in the State of Colorado, to provide real estate title insurance services through attorney agents. The Company offers a variety of title insurance products and related real estate services to buyers, sellers and lenders involved in real estate transactions through a network of 3,279 limited attorney agents and law offices in the states of Colorado, Utah, Minnesota, and North Dakota. The Company is an approved title insurance underwriter in Colorado and acts as an agent for another title insurance company in Minnesota and North Dakota. Until October 14, 2003, the Company was licensed in the State of Utah. On that date, the Company's Certificate of Authority was suspended by the State of Utah, Department of Insurance.

Membership in the Company is limited to licensed attorneys who are active in the practice of law in those states from which the Board of Directors has agreed to accept members.

Denver, Colorado is the home office for business conducted in Colorado, Utah, Minnesota, and North Dakota. All accounting and personnel information and benefits as well as policy processing, policy inventory control, and all claim's information is maintained in Colorado.

The Company has an office in Minneapolis, Minnesota with a staff of seven employees, who answer underwriting and claims questions, and conduct training for 747 licensed attorney agents in Minnesota, North Dakota and Wisconsin and perform other related services. The Company is an agent for Attorneys Title Insurance Company of Florida (ATIF) in Minnesota, North Dakota, and Wisconsin. Therefore, ATIF reports all premiums written and maintains the reserves required by statute in those states. Pursuant to its underwriting agreements with ATIF, the Company covers the first \$50,000 of any known claims in Minnesota, North Dakota, and Wisconsin and ATIF is responsible for the remainder of the liability. Starting in 2003, the Company maintains Statutory Premium Reserves for the first \$50,000 of policy liability.

The Company also maintains an office in Salt Lake City, Utah with a staff of five to answer underwriting and claims questions and perform other related services.

The Colorado office has a staff of nineteen (19) employees. This office conducts all accounting functions including payroll preparation, financial statements, claim reporting and policy processing for all states. The corporate records are kept in Denver and all policies are processed and stored in Denver.

The Company has access to various Colorado counties' clerk and recorder's databases for title and ownership verification of real property. The Company therefore is able to provide title information for its member agents within the metro area of its home office.

There are 213 licensed attorney limited agents in the state of Colorado who are trained by Colorado employees. Limited agents in Minnesota and Colorado are trained by personnel in those offices. Limited agents are audited on an annual basis.

The Company has a total of 960 licensed limited agents in the four states in which it currently does business. The home office in Denver maintains all information and keeps records of policies written and policy inventory of limited agents, both current and past. Each state has a marketing plan to acquire new member attorney limited agents and assist these limited agents with updates in real estate laws and economic changes.

For the State of Colorado, the Company has an automatic treaty of reinsurance with ATIF. According to that agreement, the Company retains the first \$100,000 of liability on each policy and ATIF reinsures the balance of each policy up to \$7,000,000. Any policy that exceeds \$7,000,000 has an additional reinsurance agreement for the balance of the exposure. Statutory reserves are established and premium tax paid according to statutes in Colorado.

Board of Directors

The Company has a board of nine (9) directors which meets three (3) times a year to set general policies and direction for the Company, and to review financials, investments, claims and all other matters of importance to the Company. The directors are attorneys from each of the three states in which the Company has offices, and from Florida. Attorneys Title Insurance Fund, (a Business Trust) owns 81.55% of the total shares of stock in the Company.

The board makes requests and suggestions to management in regards to financial matters and claims matters. The auditors from CPA firm PricewaterhouseCoopers LLP report directly to the Board of Directors.

PURPOSE AND SCOPE OF EXAMINATION

State market conduct examiners with the Colorado Division of Insurance (DOI), in accordance with Sections 10-1-201, 10-1-203, and 10-1-204, C.R.S., which empowers the Commissioner to require any company, entity, or new applicant to be examined, reviewed certain business practices of Attorneys Title Guaranty Fund, Inc. (hereinafter referred to as Company) as applicable to title insurance in the State of Colorado. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to title insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2003 to December 31, 2003.

File sampling was based on a review of underwriting files that were systematically selected using ACL TM software and computer data files provided by the company. The sample size chosen was based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. The examination report is a report by exception. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted. Therefore, much of the material reviewed is not addressed in this report.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The examination included review of the following:

- 1. Company Operations
- 2. Sales and Marketing
- 3. Underwriting-Rating
- 4. Claims

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Colorado Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's title insurance sales & marketing, underwriting, rating, and claims practices to determine compliance with the Colorado insurance laws outlined in Exhibit 1.

Exhibit 1

Law	Subject		
Section 10-1-128	Fraudulent insurance acts – immunity for furnishing information		
	relating to suspected insurance fraud – legislative declaration.		
Section 10-3-1104	Unfair methods of competition and unfair or deceptive acts or		
	practices.		
Section 10-4-404.5	Rating plans property and casualty type II insurers-rules.		
Section 10-11-101	Short title.		
Section 10-11-102	Definitions.		
Section 10-11-103	Compliance with article required.		
Section 10-11-104	Corporate form required.		
Section 10-11-105	Financial requirements prior to this article.		
Section 10-11-106	Determination of insurability required.		
Section 10-11-107	Powers.		
Section 10-11-108	Prohibitions.		
Section 10-11-109	Unearned premium reserve.		
Section 10-11-110	Amount of unearned premium reserve-release.		
Section 10-11-111	Reserve for unpaid losses and loss expense.		
Section 10-11-112	Net retained liability.		
Section 10-11-113	Power to reinsure.		
Section 10-11-114	Legal investments and admitted assets.		
Section 10-11-115	Prior investments.		
Section 10-11-116	Title insurance agents licensed.		
Section 10-11-117	Title insurance agents-certain names prohibited.		
Section 10-11-118	Title insurance.		
Section 10-11-119	Laws applicable.		
Section 10-11-120	Corporate existence preserved.		
Section 10-11-121	Application of article-other laws applicable.		
Section 10-11-122	Title commitments.		
Section 10-11-123	Notification of severed mineral estates.		
Regulation 3-5-1	Title Insurance.		
Regulation 1-1-7	Market Conduct Record Retention.		
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And		
	Document Requests.		
Regulation 5-1-10	Rate and Rule filing Submissions Property and Casualty Insurance.		
Regulation 6-4-1	Privacy of Consumer Financial And Health Information.		

Contract Forms and Endorsements

The Company's title insurance forms and endorsements were reviewed for compliance with applicable Colorado insurance laws effective during the period under examination.

Underwriting-Rating

The examiners reviewed the rate and fee filings for title premium, submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against a sample of title policies, rated by county, type and amount of loan, to determine compliance with filed base rates and fees.

Population	Sample Size	Percentage to Population
30,729	100	0.3%

Claims

The examiners reviewed all of the claims files, as submitted to the Colorado Division of Insurance for the period under examination. Fourteen (14) files were originally submitted but it was determined that one (1) of the files did not fall within the scope of the exam (calendar year 2003) and therefore it was not included in the review.

Population	Sample Size	Percentage to Population
13	13	100%

EXAMINATION REPORT SUMMARY

The examination resulted in four (4) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all title insurance companies operating in Colorado. These issues involved the following categories.

Operations:

The examiners identified one (1) area of concern in their review of the Company's operations. The issue pertains to Colorado insurance law requirements dealing with the anti-fraud language.

• Failure to include the required anti-fraud language on all printed applications for insurance, or on all insurance policies, or on all claim forms provided or required by the Company.

It is recommended that the Company review its general operating procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

Underwriting and Rating:

The examiners identified two (2) areas of concern in their review of the Company's underwriting and rating. These issues pertain to Colorado insurance law requirements dealing with the rating and calculating of title insurance premiums. The issues are identified as follows:

- Failure to include rating rules sufficient to prevent unfairly discriminatory rating practices.
- Failure, in some cases, to properly calculate and charge the filed rate/premium for a policy of title insurance.

It is recommended that the Company review its rating procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

Claims:

The examiners identified one (1) area of concern in their review of the Company's claims. The issue pertains to Colorado insurance law requirements dealing with the Company's claims handling practices. The issue is identified as follows:

• Failure to promptly acknowledge a title claim.

It is recommended that the Company review its claims payment procedures, and make necessary changes to ensure future compliance with applicable statutes and regulations as to the issue addressed.

MARKET CONDUCT EXAMINATION REPORT FACTUAL FINDINGS ATTORNEYS TITLE GUARANTY FUND. INC.

COMPANY OPERATIONS/MANAGEMENT FINDINGS

Issue A: Failure to include the required anti-fraud language on all printed applications for insurance, or on all insurance policies, or on all claim forms provided or required by the Company.

Section 10-1-128(6), C.R.S. Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states in part:

(a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."

It appears that the Company is not in compliance with Colorado insurance law in that the above required statement is not included on either the Company's insurance applications, policies, or claim forms.

Recommendation #1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-128, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that the required anti-fraud statement is included on one of the applicable forms as required by Colorado insurance law.

$\frac{\textbf{UNDERWRITING AND RATING}}{\textbf{FINDINGS}}$

Issue B: Failure to include rating rules sufficient to prevent unfairly discriminatory rating practices.

Section 10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (f) (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403, C.R.S., Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation, states in part:

- (1) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:
 - (c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104(1)(f) shall apply.

Regulation 3-5-1, amended effective January 1, 2002, Title Insurance, promulgated under the authority of 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states in part:

Section 4. Rules Regarding Rates And Fees:

- (E) Schedules shall not apply to title commitments and/or policies or closing and settlement services contracted for prior to the effective date of such schedule.
- (F) No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates and fees.

A review of the Company's rating rules and procedures indicated a lack of specific guidelines and/or direction regarding how to determine the premium for a title policy when more than one "prior policy" qualifies for a credit. Such deficiency creates a permissive, discretionary element that allows the Company to inconsistently apply credits when two (2) or more prior policies (with different prior insuring amounts) qualify. Permissive, discretionary, rating rules that allow for potential disparate treatment between individuals of the same class and of essentially the same hazard and/or expense in the amount of premium charged appear to violate Colorado insurance law.

Recommendation #2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-403, C.R.S. and Regulation 3-5-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has revised its rating rules and procedures to clarify how prior policy credits should be calculated to prevent unfair discriminatory rating practices in order to ensure compliance with Colorado insurance law.

Issue C: Failure, in some cases, to properly calculate and charge the filed rate/premium for a policy of title insurance.

Section 10-3-1104, C.R.S. Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (f) (II)Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-401, C.R.S., Purpose- Applicability, states in part:

- (3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:
 - (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title, medical malpractice by a joint underwriting association regulated under part 9 of this article, credit, workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance that are subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner; except that credit life and credit accident and health insurers shall file schedules of premium rates pursuant to sections 10-10-109 and 10-10-110.

Regulation 3-5-1, amended effective January 1, 2002, Title Insurance, promulgated under the authority of 10-1-109, 10-3-1110, and 10-4-404(1), C.R.S., states in part:

Section 4. Rules Regarding Rates And Fees:

(F) No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates and fees.

Title insurance policies/commitments/settlement statements

Population	Sample Size	Number of Exceptions	Percentage to Sample
30,729	100	17	17%

An examination of 100 policies/commitments and settlement statements, representing approximately .3% of those policies/commitments and settlement statements issued by the Company during the examination period, showed seventeen (17) exceptions wherein the Company failed to charge the correct title premium as required by Colorado insurance law.

These exceptions were a result of:

- not charging for endorsements;
- giving a credit for a prior policy even though a copy of that policy or deed of trust was not provided;
- not changing the premium when the amount of the loan is changed prior to closing;
- using a rate for a different county;
- charging a reissue rate for a refinance; and
- charging an incorrect fee for endorsements.

Recommendation #3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S., and Regulation 3-5-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its procedures relating to the accuracy of title insurance premiums and implemented necessary changes in order to ensure compliance with Colorado insurance law. The Company should also provide evidence to the Division that any overpayments identified during the exam have been refunded to the appropriate individuals.

CLAIMS FINDINGS

Issue D: Failure to promptly acknowledge a title claim.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:
 - (II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

Title insurance claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
13	13	1	8%

An examination of the entire population of thirteen (13) claims received by the Company during the examination period showed one (1) exception wherein the Company failed to provide a prompt acknowledgement to the claim as required by Colorado insurance law. The file in question contained evidence that a letter requesting a claim was submitted twice (over a seven month period) before it was acknowledged.

Recommendation #4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-1104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed it claims handling practices regarding prompt acknowledgement of a claim and implemented necessary changes in order to ensure compliance with Colorado insurance law.

SUMMARY OF RECOMMENDATIONS

Attorneys Title Guaranty Fund, Inc.

<u>ISSUE</u>	<u>REC</u> <u>NUMBER</u>	PAGE NUMBER
Operations		
A: Failure to include the required anti-fraud language on all printed applications for insurance, or on all insurance policies, or on all claim forms provided or required by the Company.	1	14
Underwriting and Rating		
B: Failure to include rating rules sufficient to prevent unfairly discriminatory rating practices.	2	17
C: Failure, in some cases, to properly calculate and charge the filed rate/premium for a policy of title insurance.	3	19
Claims		
D: Failure to promptly acknowledge a title claim.	4	21

State Market Conduct Examiners

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For

The Colorado Division of Insurance 1560 Broadway, Suite 850 Denver, Colorado 80202

participated in this examination and in the preparation of this report.